

**BOROUGH OF DUMONT
BERGEN COUNTY, N.J.
ETHICS BOARD MINUTES
NOVEMBER 18, 2010**

The meeting was called to order by Joanne Westphal, Chairperson, at 7:02 pm.

Flag Salute

SUNSHINE LAW: The notice requirements of the Open Public Meetings Act of the State of New Jersey have been satisfied by the inclusion of the date, time and place of this regular meeting in the annual schedule and notice of regular meetings of the Ethics Board. Such annual schedule and notice of regular meetings is posted at Borough Hall, was sent to **The Record** and the **Ridgewood News**, posted on the Borough website and filed with the Borough of Dumont on December 3, 2009.

ROLL CALL: Adriann Green, Salvatore Mastroeni, Thomas Reagan, Rafael Riquelme, Joanne Westphal-present.

Also present at the meeting was Anne Marie Rizzuto, Board Attorney, and Kathy Schaefer, Board secretary.

Motion to open the meeting to the public: Ms Westphal;
Second Mr. Reagan
All in favor: Aye
Motion passed.

Ms. Rizzuto advised that there is a member of the public here. Are you here to address a particular matter that you discussed with me via email? Is that correct? He advised yes and another matter as well. He stated his name Bob Zeitlinger and address 237 Lexington Avenue. The first thing that he noticed and wanted to ask about isn't there six people on the Ethics Board, who are we missing? The secretary stated Mr. Baguer, that he moved and resigned. He asked if Mr. Baguer was a Republican, Independent or Democrat. The secretary stated Republican. Mr. Zeitlinger asked what's the schedule for getting a new person; Ms. Schaefer advised that the Mayor is looking at appointing somebody very shortly.

Mr. Zeitlinger advised that the issue he raised, but that he was not really here to discuss, but the issue that he had raised was a former public official's appointment to the Ethics Board. He assured Mr. Riquelme that there was nothing personal at all against him. His issue is that if the Ethics Board needs to address an issue with any member of the Council as constituted right now, Rafael would have a hard time voting on it. He served with every one of them, including Matt Carrick. Mr. Riquelme advised that he had not served with Matt Carrick or Ken Freeman. Mr. Zeitlinger pointed out that Ken Freeman had run against him, so if Ken Freeman had an issue in front of the Ethics Board your position, if it were against him, somebody could say "well he beat you in the election so that's why you voted the way you did".

Ms. Rizzuto advised that she did address all of Mr. Zeitlinger's questions with respect to legal aspects with email, etc. and the bottom line for recusal is that it is fact sensitive depending upon the facts as they come up. So talking in a vacuum about the mere fact that he knows a person or served with the person or ran against a person is not a basis for recusal. The facts have to be assessed within the context of the matter before the Board at the time the matter is raised and whether or not the person has a financial or personal gain to be made or whether or not that person cannot reach a decision based upon facts as presented to us with objectivity. She stated that while she understands what Mr. Zeitlinger is saying, Mr. Zeitlinger stated that what he thought the Ethics Board was about, not can he be or can't be objective; it's is there the perception that he could be unobjective? Ms. Rizzuto stated that as she explained to Mr. Zeitlinger in the legal analysis that she sent to him, that is not the standard that governs this board or any other board. Mr. Zeitlinger advised that he didn't want to belabor the point, he just wanted to make the case that he made to Ms. Rizzuto so that you all understand it and his final point is that legal standards to him are in this side of the room; ethical standards are on the other side. Legal standards and ethical standards are not the same, they should not be confused. There are plenty of things that you can do that are legal that are unethical and that's what the Ethics Code really addresses. To me, a lot of the things that you decide upon are legal and everything can't be addressed in the Ethics Code; that you have to address issues that are legal but unethical. If we are trying to go by just the legal letter of the law, we don't need an Ethics Board.

Ms. Rizzuto advised that obviously Mr. Zeitlinger is forgetting one major aspect that every public board member or every board member has to make when accepting an appointment, when coming to meetings or failing to come to meetings and when making decisions and that is, there is a tenet in the law that says you should not willy-nilly recuse yourself because there is a possibility of an issue, there has to be a real issue because if you are truly going to be hampered from going to make a decision every single time it comes up before you, then you should not accept the appointment. There is a tenet in the law that says each person accepts an appointment to a board with honesty and fairness. Sometimes you have to make decisions that are tough decisions and you can't just say well I'm related to so and so and therefore I can't do this matter. It has to be a real connection that makes you say I need to recuse myself and as I explained it in the responses that I gave to Mr. Zeitlinger, recusal comes up in all the boards that I represent in a lot of different ways and I have been able to successfully handle them in consultation with a particular member to say if there's really an issue here you need to recuse yourself. I am sure that Rafael and all of these board members will be guided by what is right and fair, not just what is legal, but what is right and fair. This Board accepted the appointment because we don't make the appointment. The appointment is made by the Mayor and approved by the Council and it was done a year ago in consultation even with me. You saw my lengthy analysis of all of the different board members. Maybe it seems cut and dry that there is no outright prohibition against this and maybe your beef is we should change our local ordinances to forbid any former council members from doing anything in the town. You would probably be cutting off your nose to spite your face in that case because often council members who retire or not re-elected or resign but still want to serve the town are very good board members. They have intimate knowledge of the town that assists boards. Mr. Zeitlinger advised that he was not suggesting that any former council member not be able to sit on any board for the duration of their residence in Dumont. His issue was with an immediate past council member serving on a board where they

may sit in judgment of people that they served with closely for one or more years especially in an instance where they were appointed by that council and mayor.

Mr. Reagan asked where would you draw the line on that. Mr. Zeitlinger said he would draw the line on Council because he is going to sit in judgment of those people with regard to that job that he formerly had and that he worked with them side by side. Ms. Rizzuto advised that every matter has a fact sensitive. We've yet to actually have an instance of an investigation by this board. Second of all, I can't say that Rafael could not investigate and sit in judgment of any particular council member. It really depends upon the length of time, the particular knowledge he has about the particular ethics issue, and it's just too attenuated to talk about. Obviously, I think this Board should in fact make note of this member of the citizenry of his concern and when and if an issue ever arises I am not aware of any council situation coming our way, but certainly Mr. Zeitlinger's concerns are well taken and not to belabor the point but recusal is a fact sensitive issue every time it comes up.

Mr. Zeitlinger said the issue he really wanted to address, the reason why he was really here is the Local Finance Ethics Law Financial Disclosure Statements that are filed by every member of the Council and the Mayor. Here's one – you can just pass it around. This is a photocopy; it's very hard to read but you can get the point. Ms. Rizzuto questioned if this was the state's Local Finance Form. He said yes. His question is and he would like to request, not sure of what sort of power the Ethics Board has, is when there is somebody who like Mayor McHale is a principal of North Jersey Public Affairs. The whole issue of let's put down where your salaries come from and then you will be able to see if there is any conflict of interest. Sounds good, but it doesn't really work, do you know what the problem is with it? When you put down that you work for North Jersey Public Affairs and that you made more than \$2,000 last year and the last three years, we have no idea of who your clients are. So the fact that you were paid by North Jersey Public Affairs doesn't really tell us anything, so it's kind of like transparency without being transparent at all. So you are looking at me like so what do you want to do. Mr. Zeitlinger said he would like to see if we can get when anybody among the Mayor and Council, at least for now, has a position where they have specific clients, that any client that they have that they bill over \$2,000 in a specific year is listed on this form. And it may not be this form; it may be a form that only Dumont has. Does anyone have any questions, I don't know if I explained that well? If Harry Stylianou has a law firm which he does, it's in the debt collection area from what I understand, so I am using that as an example because it seems like it is so far afield that there could possibly be a conflict of interest so it is not a real example for Harry questioning his possible of conflict there. But say that he had a law firm that did government lobbying and worked with particular interest companies who want to lobby down in Trenton. There could be instances where he is lobbying or working for companies that are also the town vendors. We would never know that because all he has to do is put Stylianou and Company on his financial disclosure form. So while people can sort of wrap themselves in the white flag of transparency saying that we filled out a disclosure form so there really should be no problem, we really don't know anything more than we already knew. So I would like to have the individual clients and with a law firm maybe you can't do that because there are privacy issues but for a lobbying firm or a public affairs firm or a public relations firm, there really aren't any privacy issues so I would like to have those listed because I am not accusing Mayor McHale of having any conflicts of

interests, I just don't know whether he does or not and I would feel better if I knew who his clients were.

Ms. Rizzuto stated that obviously this is a state form. It is not meant specifically to establish whether a particular individual or company has a conflict of interest or not; it's meant to give financial disclosure to the Local Finance Board for their purposes and every municipality is required to collect them from board members, council members, etc. and there is even some issue as to whether someone like an independent contractor has to file it. I have gotten conflicting reports on that. When I was a member of a law firm, I didn't file a personal one, my law firm would file it, so there are some issues as to who has to file when and what do they have to reveal.

Mr. Maestroni questioned if we get into confidentiality laws by putting names of clients. Ms. Rizzuto stated that even lawyers who claim attorney-client privilege can be forced under subpoena to go into court and reveal their clients' names and address. Whether or not a public interest firm, clients have an expectation of privacy of their name and address. Whether or not there is a contract that exists that says you can't reveal that, I hired you as a public interest firm. Those create all kinds of issues but this form is what it is because the state has said here's what you need to do and you need to give us your sources of income over \$2,000 and presumably that matches with what you report on your tax return. So the simple answer to Mr. Zeitlinger is that this board can take it under advisement but it is not up to us first of all to create or change the state form or to create a local form unless we want to look at that issue, look at our current ordinances and recommend to the Council that they expand their ordinances to require x, y or z. She stated she did not know what x, y or z would be. We have yet to make ordinance recommendations to our governing body, I don't know whether or not we can; so at this point, all I would say to the Board is take it under advisement and if you want to direct me to research and look at this issue, you can think about it, tell me maybe at the January meeting, yes let's look at it, it's a great idea and here's what we would like to see or you can tell me we don't feel there is a need for that or we don't feel it is the responsibility of the Ethics Board to tell the governing body to legislate something that currently does not exist. These forms have been around maybe seven or eight years, not a long history of it, and I frankly don't even know what the Local Finance Board does with them. I suppose there is ways to find out who private clients are but it would probably be extremely burdensome in some instances to have to do that. Now if so and so has a contract with so and so and he is approving a contract here for the same person, I would say not only might that be an ethics violation but it might be illegal, but is not necessarily our job to uncover true existing conflicts of interest; it's our job to investigate that and it's not our job to create every kind of possible law we could recommend to the governing body to avoid conflicts of interest. She thinks that at a certain point, you have to start with people in government positions, whether elected, appointed, what ever, you have to assume that they are being honest, upright citizens. Mr. Zeitlinger advised that he disagreed with that. Ms. Rizzuto continued that as an Ethics Board, we cannot say that every member is a crook and therefore, we should have them do a 30 page disclosure statement. It's impossible to do that and frankly if someone wants to do something illegal in the approval of contracts, they are going to do it and their just desserts will come. It's probably not going to come from this Board; it will probably come from the Prosecutor's office. There are certain roles that every board assumes and I am not quite sure that role is to tell the government body to legislate this. If you want me to research this, I will spend

the time and the effort to research it if you think it's a good idea, but it is real hard to say how far you go with it. If a lawyer has 3, 000 clients, do you want them to list every client. That's crazy, you can't do it.

Mr. Maestroni asked what is our process, we have a concerned citizen about appearance of possible impropriety; how do we proceed – do we go into a closed session. Ms. Rizzuto stated no – that is not a closed session. Mr. Maestroni asked what is the process. Ms. Rizzuto stated that with the first matter as far as she is concerned, the Board should do nothing further. With the second issue whether or not we should expand what governmental officials in the Borough of Dumont do versus every other municipality in this state, I am not aware of ordinances that require divulging of each and every client that particular person might have. What would I say that you should do right now – thank you very much we will take it under advisement – that's how she feels and whether or not the Board wants her to do something further, I think that you should think about it, you should dwell on it and get back to me in January. There's no rush here though those forms are due by April of every year to the State, but there is no way in which the Council is going to enact an ordinance that we send up in January for April. So take it under advisement, tell me in January you want me to do something or respectfully you don't want to do anything and then we go from there. Don't make a decision tonight.

Mr. Zeitlinger advised he didn't think it would be a 30-page report and if there were that many clients, it would be an organization that has an accounting department, which could probably just print out a sheet of paper with clients on it if you had 30 pages of clients' names to put on there. So I'm not really sure that it is as burdensome as you might imagine. For me, he runs a public relations firm, I could put that list together for the last five years in a matter of 20 or 30 minutes and I am a one-man shop. So I don't have a lot of clients but I also don't have a lot of administrative support either. I don't think it is a big burden. Mr. Zeitlinger thanked the Board for listening.

Since there were no other members of the public present, we will move on to our agenda.

Motion to approve the minutes of the March 18, 2010 meeting: Mr. Reagan,

Second Mr. Mastroeni

All in favor: Aye

Ms. Westphal and Mr. Riquelme: Abstained

Motion passed.

Copies of the Board Attorney's Invoice dated November 10, 2010 were distributed to each of the board members prior to the meeting. Ms. Rizzuto advised that with respect to both of the matters that are billed; one was the gentleman who was here before who raised an issue and the other was about the candidate who needed a letter to his employer, which was authorized by Ms. Westphal.

Motion to approve November 10, 2010 invoice from Ms. Rizzuto: Ms. Westphal;

Second: Mr. Reagan

All in favor: Aye

Motion passed.

Items for Discussion:

Mr. Maestroni asked that because Mr. Zeitlinger brought this instance up, whether we think about it until January or not, do we apprise the Mayor and Council that these concerns have come up. Ms. Rizzuto advised that if you wish to do that, you can have the Board Secretary send a formal email or letter to them just saying something of that nature. The Secretary advised that she could type up that section of the minutes that applied to Mr. Zeitlinger's concerns and just send that portion of the minutes to the Mayor and Council. Mr. Maestroni advised he thought that would be okay, just to let them know these concerns have come up; we haven't made a decision which way we are going to go with it but at least the Mayor and Council would have an understanding that these are concerns. A discussion followed as to should the Board wait until after the minutes are approved at the January meeting or do we want them to know now. It was agreed that that section of the minutes would be sent to all Board members and the Board Attorney and then sent to the Mayor and Council for information purposes.

A copy of Resolution #10-04 Establishing Meeting Schedule for 2011 was sent to all Board members prior to the meeting.

Motion to approve Resolution #10-04 Establishing Meet Schedule for 2011: Ms. Green;

Second: Mr. Reagan

All in favor: Aye

Motion passed.

A copy of Resolution #10-05 Authorizing Fair and Open Process for Legal Notice for Request for Qualifications for Ethics Attorney was sent to all Board members prior to the meeting.

Motion to approve Resolution #10-05 Authorizing Fair and Open Process for Legal Notice for Request for Qualifications for Ethics Attorney: Ms. Westphal;

Second: Mr. Maestroni

All in favor: Aye

Motion passed.

Motion to adjourn the meeting at 7:50 pm: Ms. Green;

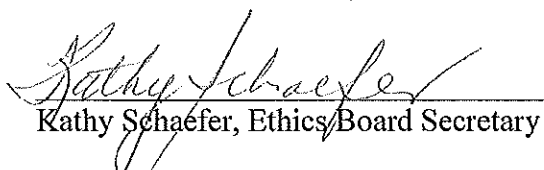
Second: Ms. Westphal

All in favor: Aye

Motion passed.

The next regularly scheduled meeting of the Ethics Board is January 20, 2011.

Minutes respectfully submitted by


Kathy Schaefer, Ethics Board Secretary